IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Crl.L.P..No. 530 of 2007()

ST.70/2006 of JUDICIAL FIRST CLASS MAGISTRATE COURT - III, KOCHI

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PETITIONER/COMPLAINANT:

M/S. FOUR SQUARE CREDITS A PARTNERSHIP
FIRM WITH THEIR OFFICE AT 34/704, BEENA ANJUMANA
ROAD, EDAPPALLY, KOCHI-682024, REPRESENTED BY ITS
MANAGING PARTNER, SHRI ALDI PREMAN.

BY ADV. SRI.PEARSON S.FERNANDEZ

RESPONDENTS: ACCUSED & STATE:

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1. RAJEEV R.S.,
16/407, JONAKAPARAMBU, AMARAVATHY, KOCHI-682001.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN-R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 530 OF 2007

Dated this the 1st day of August, 2007

O R D E R

This petition for special leave to appeal is filed against the order in S.T. No.70 of 2006 on the file of the Judicial First Class Magistrate's Court - III, Kochi. The order impugned would show that the complaint was dismissed and the accused was acquitted under Section 204(4) Cr.P.C. It is also mentioned at the top of the order that the order is passed under Section 204(4) Cr.P.C.

2. No court is empowered to acquit an accused under the above section. Sub-section (4) of Section 204 Cr.P.C. reads as follows:

> "When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint."

Section 204 Cr.P.C. does not empower the court to acquit an accused

under any circumstances. Acquittal of an accused even for non-appearance or non co-operation can only be under Section 256(1) Cr.P.C. In the above circumstances, the impugned order cannot be considered as an order by which the accused has been acquitted. It can be taken only as an order dismissing the complaint. Dismissal of a complaint can also be on the ground of non payment of process. If that be so, an appeal will not lie before this Court. It is also reported that the accused - first respondent herein never appeared before the court below.

In the above circumstances, the Crl. Leave Petition is dismissed without prejudice to the right of the petitioner to seek appropriate remedy as per law. Certified copy of the order produced by the petitioner shall be returned to the learned counsel for the petitioner.

(K.THANKAPPAN, JUDGE)

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